

Law Enforcement on Terrorism: The Role of Judicial Decisions

Muhammad Taufan Badollahi

State Islamic University of Datokarama, Indonesia
mtaufan@uindatokarama.ac.id

Ubay Ubay

State Islamic University of Datokarama, Indonesia
ubay@uindatokarama.ac.id

Amiruddin Amrullah

Auckland University of Technology, New Zealand
amir.amrullah@aut.ac.nz

DOI: 10.23917/jurisprudence.v13i2.2672

Submission

Track:

ABSTRACT

Received:

September 4, 2023

Final Revision:

November 25, 2023

Available online:

December 28, 2023

Corresponding

Author:

Muhammad Taufan
Badollahi

mtaufan@uindatokarama.ac.id

Purpose of the Study: The repressive law enforcement carried out as a response against the crime of terrorism has caused issues with law enforcement's effectiveness in Indonesia. It was discovered that the normative approach did not cut the chain of terrorism. On the contrary, it created new terrorists. This paper aimed to construct the relationship between law enforcement, judicial decisions, and legal objectives.

Methodology: This research used the dogmatic legal research method by statutory and library approaches. The data of this research were gathered from news and judicial decisions on terrorism cases.

Results: Results suggest that law enforcement, especially normative-repressive judicial decisions, has resulted in new issues, namely society's rampant actions against the state, particularly towards the law enforcement apparatus.

Applications of this Study: This condition will further imply with the rampant actions of state delegitimizing in society. In line with that, this paper suggests that a new style of law enforcement should be applied in solving terrorism cases in this country. The said approach is law enforcement who emphasizes the humanity of the suspect, heavily addressing the protection of the suspect's rights in the crime of terrorism.

Novelty/Originality of this study: This is the pilot research discussing judicial decisions in courts concerning terrorist cases in Poso and its surroundings.

Keywords: Law enforcement, judicial decisions, terrorism, social resistance, legal justice.

ABSTRAK

Tujuan Studi: Penegakan hukum represif yang dilakukan sebagai tanggapan terhadap kejahatan terorisme telah menimbulkan masalah dengan efektivitas penegak hukum di Indonesia. Ia menemukan bahwa pendekatan normatif tidak memotong rantai terorisme. Sebaliknya, ia menciptakan teroris baru. Dokumen ini bertujuan untuk membangun hubungan antara penegakan hukum, keputusan pengadilan, dan tujuan hukum.

Metodologi: Penelitian ini menggunakan metode penelitian hukum dogmatis dengan pendekatan undang-undang dan perpustakaan. Data dari penelitian ini dikumpulkan dari berita dan keputusan pengadilan tentang kasus terorisme.

Hasil: Hasilnya menunjukkan bahwa penegakan hukum, terutama keputusan-keputusan pengadilan normatif-represif, telah menghasilkan masalah baru, yaitu tindakan ramping masyarakat terhadap negara, terutama terhadap aparat penegak hukum.

Aplikasi dari Studi ini: Kondisi ini akan lebih menyiratkan dengan tindakan ramping delegitimasi negara di masyarakat. Sesuai dengan itu, makalah ini menyarankan bahwa gaya penegakan hukum baru harus diterapkan dalam menyelesaikan kasus terorisme di negara ini. Pendekatan yang disebutkan adalah penegakan hukum yang menekankan kemanusiaan tersangka, dengan serius menangani perlindungan hak tersangka dalam kejahatan terorisme.

Kebaruan/Orisinalitas: Ini adalah penelitian pilot yang membahas keputusan pengadilan di pengadilan mengenai kasus terorisme di Poso dan sekitarnya.

Kata kunci: penegakan hukum, keputusan pengadilan, terorisme, perlawanan sosial, keadilan hukum.

INTRODUCTION

The law enforcement that does not appraise the humanity aspect in the Poso area and its surroundings has disturbed people's sense of justice. Ironically, terror perpetrators gained sympathy from society. The Indonesian government's success in eradicating terrorism is highly determined by the capabilities of law enforcement, including judges, in gaining people's sympathy. The state apparatuses' incapability to understand society's sense of justice (*rechtsgevoel*) has degraded the law enforcement effectiveness in regions that are the base of terrorists. The sense of justice (*rechtsgevoel*) is a value embraced by society (Soekanto, 2007). If it is neglected, or worse negated in law enforcement, thus hurting the people's legal consciousness, society will show antipathy toward law enforcement. As a consequence, law enforcement will be counterproductive (Lemek, 2007). It can assertively be stated that the lack of the humanity aspect in law enforcement

will breed resistance against the apparatus rather than becoming a method to eradicate terrorism, and in turn, it will let terrorists gain support.

So far, studies on law enforcement against terrorism appear to analyze the normative aspect and abandon the descriptive aspect which is its crucial part. This normative propensity can be observed in three types of research. First is studies on law enforcement against terrorism from the national law and international law perspectives (Nasution, 2018). Second is studies that discuss legal policies against terrorism as a criminal action (Ahmadi, 2017). Third is studies that emphasize the legal-political aspect of law enforcement against terrorism (Rahmat, 2017). These types of the "relationship between law enforcement and terrorism" perceive the use of the hard approach in law enforcement against terrorism. It disregards the soft approach as a prowess in law enforcement. Law enforcement is frequently wrongly defined as a process of enforcing state power, which commonly uses the hard approach (Manik, 2003; Santoso, 2001; Triyono, 2010).

This paper departed from an argument that the normative law enforcement (hard approach) which uses legal justice as the main path has violated the sense of social justice. On the contrary, it has ignited society's antipathy against the currently applicable law enforcement. The hard approach implies that the eradication of terrorism relies on the use of violence (Soeharto, 2007). Even though such actions are legal, the use of violence has a risk of the emergence of the state's arbitrariness in oppressing the people in the name of national security (legal justice) (Pitaloka, 2004). In such a position, the state disperses violence to society. Consequently, law enforcement becomes counterproductive as it results in new violence (Wignjosoebroto, 2011).

Apart from law enforcement, legal decisions on terrorism cases may provoke dissatisfaction if they are deemed unjust. Thus, in their judicial considerations, judges should be able to describe the aspect of justice. If judges opt for justice, for instance, as a basis to make a verdict, society will accept it. An emphasis on the principle of benefit will cause an issue of massive resistance from society. Therefore, the problems studied in this research are: (1) What are the judge's legal considerations in terrorism cases that have legal force? and (2) What is the implication of the considerations?

RESEARCH METHOD

This research employed the judicial normative method. This is qualitative research that uses primary and secondary data. The primary data consist of information on the ongoing process of

law enforcement, methods of law enforcement based on law enforcers' standard operational procedures (SOP), variation of facilities/media in law enforcement, solutions that law enforcers should apply in every hardship, and judicial decisions on terrorism cases. The secondary data consist of legal regulations that were either directly or indirectly relevant to terrorism as well as news on judicial decisions against terrorism perpetrators. Both primary and secondary data were used as a foundation for relationship analysis between humanistic law enforcement and terrorism (Volkh, 2017).

The research was carried out through the collection of secondary data, i.e., data from online news and interviews with law enforcement and public figures (Volkh, 2017). First, the secondary data were collected through the statistics of the Central Sulawesi Province Regional Police Force. Next, the researchers gathered data on annually-updated terrorists. Second, the data drawn from online news were collected through topical news mapping concerning terror perpetrators. Third, this paper was compiled with interviews with public figures and family members of terrorists. Both public figures and terrorists' families suffered direct impacts of law enforcement against terrorism. Various data categories taken from online media served as footing for the analysis of the relationship between law enforcement and terrorism.

Of the 10 (ten) cases studied, 8 (eight) were convicted with lighter sentences than those charged. The judge's considerations that led to their sentences include that the defendant confessed openly and regretted their actions, the defendants and their family apologized to the victim's family, the defendant was well-behaved and did not complicate the trial, the defendant has never been convicted, the defendant was young, and the defendant had family responsibilities.

The consideration of "having apologized to the victim's family" is an attempt by the perpetrator to eliminate or reduce the severity of the crime. As for the defendant's acknowledgment of his guilt and remorseful attitude, it is fully included in the realm of the judge's subjective assessment. Nevertheless, this is regarded as a mitigating circumstance as it diminishes the level of graveness of the defendant.

The consideration of "the defendant is young" exudes the hope that the defendant has a wide opportunity to improve himself and return to society as a useful individual. Meanwhile, the consideration of "the defendant has family dependents", is a consideration taken by accounting that the punishment does not solely affect the defendant, but also his family who are left behind while the defendant undergoes deprivation of liberty.

RESULTS & DISCUSSION

The humanistic legal approach in handling cases of terrorism

Law enforcement that is not accompanied by a humanistic approach, rather than resulting in legal compliance, will ensue resistance against the law. The relationship between law enforcement and social resistance can be verified using three questions: (a) How is the law enforcement process applied and implemented by the state (the arrest, the difficulties, and the resolution)? (b) How is the manifestation of society's resistance against the applicable law enforcement process? and (c) How is the implication of society's resistance against the law enforcement method using the hard approach? These questions will be answered carefully below.

Information on the occurrence of the criminal act of terrorism is commonly obtained through reports from intelligence agencies, complaints, or directly found out by the police. After a certain event is announced as an act of terrorism, the investigation stage will be carried out through investigation, implementation of actions, examination, resolution, and the submission of case documents. From the various terrorism cases until today, two cases remain at the investigation stage. Based on the findings of the research, the law enforcement of the police force in the Central Sulawesi area was inefficient in handling criminal cases of terrorism as there was imbalance in the legal system. The legal substance is viewed as rather adequate, however, the legal structure lacked apparatus professionalism.

Preventive efforts by the Central Sulawesi Regional Police Force have been performed in preventive and repressive actions. The preventive actions consist of improving service in the follow-up of every report and information from the established network or members in the field, increasing awareness towards the development of signs or indications that lead to radical actions, and recording data on the terrorist network organization. The Regional Police Force also increased the preparation for possible terror attacks. It expanded the mobility of the Central Sulawesi Regional Police Force Special Detachment 88 members; increased the security of vital objects; conducted interdictions on the traffic of terrorists through exits and entrances on land, sea, and air; as well as increased teamwork with relevant parties, comprising the regional government, religious figures, political figures, public figures, and young generation. In accord, the Regional Police Force also cooperated with the mass media in dissemination to prevent the threat of bomb terror.

Furthermore, the Regional Police Force performed repressive efforts, such as conducting crime scene investigations, establishing cooperation with experts, obtaining expert assistance from

the Forensic Laboratory Center of Makassar, creating fugitive lists; chasing suspects; and arresting, detaining, and investigating perpetrators according to the legal stipulations of Law No. 5 of 2018 on the Amendment of Law No. 15 of 2003 on the Eradication of the Criminal Act of Terrorism and Law No. 8 of 1981 on the Code of Criminal Procedural. Unfortunately, this law does not provide information on events when, for example, Densus 88 mistakes the process of handling terrorism perpetrators, as in Poso. In the name of justice, officers who commit mistakes in handling terrorism should also face a legal process. Pure disciplinary punishment or administrative sanction is inefficient.

In making a verdict upon a case, judges casuistically encounter three principles, namely legal certainty, legal justice, and legal benefit. These three should be implemented in a compromise manner, i.e., by implementing them proportionally or fairly (Mertokusumo & Pitlo, 2020). In court, it is formidable for a judge to accommodate these three principles in a single decision. Judges should choose one in making a verdict on a case. These three principles cannot be simultaneously inserted in a decision (the principle of casuistic priority) (Harahap, 2017).

Law enforcement is a manifestation of the law's function as an instrument of social control. Law enforcement as an instrument of social control is a normative aspect of the law that is conducted with a facility of external power (Ali, 1990). In this case, norms are no longer self-enforcing, i.e., social norms are no longer implemented by their own power. On the contrary, it must be defended by agents of social control through threats or the imposition of sanctions on those who were proven to have violated or deviated from the norms. It is predominantly run upon the power of punishments (Yani, 2015). Even so, in implementing such a function, the law should be able to determine certain benchmarks or indicators known as the value of justice. There should not only be a consideration for legal justice, but also social justice to be considered, therefore, the law may retain its true meaning (Huijbers, 1993). Otherwise, the law will be confined to a dead end of authoritarianism, which will ironically hurt the people's sense of justice (*rechtsgevoel*). As an instrument of social control, law enforcement should be applied together with the other facets of law, such as justice, benefit, and humanity (Sulardi, 2009).

To achieve this, every decision made by the court should represent the conscience of the justice seeker (*justitia bellan*). The judge's decision should not confuse the problem or even trigger controversy in the community. For this reason, a judge's decision should (Atiqoh, 2023):

- Be a picture of the process of social life as part of social control;

- Be an embodiment of the applicable law and be useful for every individual, group, and country;

- Be a balance between legal provisions and the reality;
- Be a picture of ideal awareness between law and social change;
- Provide benefits for every litigant;
- Not be the cause of new conflicts for the litigants and the community.

The characteristic of law enforcement as an instrument of social control is an implementation that entails preventive and repressive characteristics. Preventive implementation is an effort to prevent disturbances against certainty and justice. Meanwhile, repressive efforts aim to return the legal balance in society (Ali, 2004). These two patterns appear to have a greater dependence on written law and regulations, namely official written decisions of those in power that bind the public (normative-prescriptive). These written norms are stemmed from parties that have formal power and authority (formal social control). Nonetheless, the social control process can be exercised without any violence or coercion (Iriani, 2016). Law empowerment as a media of social control is a method that allows a greater emphasis on the hard approach of law enforcement, despite other methods being applied.

Terrorism is more frequently caused by ‘cultures of violence’ in a community. The ‘cultures of violence’ are adopted by groups that encourage terrorists, thus agitating their spirit to undergo terrorism (Presetyo, Panca, & Widodo, 2016). Even though these actions are carried out by single perpetrators, on one hand, terrorism will have a supporting network and a validating ideology or state that terrorism can be carried out upon various motivations, such as religion or ideology. Such actions might be based on struggles for independence, reason to free oneself from injustice, or might be due to particular interests (Williams & Juergensmeyer, 2002). On the other hand, it might be that the culture of terror is constructed by the state which presents fear as a normal act in society. Terrorism is not alienated from the state and society, but it is a reflection of the state’s behavior towards its society. Terrorism is a socio-cultural and political construct of the state, as perceiving is believing (Perkasa, 2021).

Law enforcement against terrorism results in the creation of various issues that require response and improvements in legal policies in this field. In Indonesia, law enforcement against terrorism has been applied long before the enactment of Law No. 5 of 2018 on the Amendment of

Law No. 15 of 2003 on the Determination of the Governmental Regulation in *lieu* of Law No. 1 of 2002 on the Eradication of Terrorism Crimes into a Law.

Various problems in law enforcement against terrorism in Indonesia require further contemplation on the implementation of eradication in this field. Law enforcement against terrorism is *vis-à-vis* law enforcement in the field of human rights and the legal protection of terrorism perpetrators and their families (Atmasasmita, 2001). From the various cases that emerged due to the law enforcement against terrorism, it can be inferred that it needs evaluation and improvement policies in this department. It is to develop law enforcement that can handle cases of terrorism, which has a touch of humanity to prevent antipathy against the approach.

Law enforcement which negates the humanity aspect often leads to injustice as it is rigidly applied. Law enforcement is deemed as rigid if it only looks at one side of the articles in the law (Ali, 2012). It denotes that the law is only limitedly understood to what is written without a touch of humanity. Ironically, humanity should be emphasized in its resolution since the law is for humans rather than the fact that humans exist for the law (Rahardjo, 2006). It should be remembered that the law has an extensive dimension in humanity and social aspects. Law enforcement should be perceived as something that contains a social structure, thus it can be reviewed from the aspect of "the sociology of case" (Black, 2010). The human and humanity aspects should be accentuated in implementing law enforcement. Law enforcement has long been highlighted due to its ignorance of the aspects of humanity.

On this basis, law enforcement, especially Densus 88, should understand deeply the rights of suspects/defendants. This should be prevented from happening as what the Poso community has complained about so far. The authorities immediately arrested and tortured people who - before the community - were only at the "suspected" status. This is a problem that creates resentment towards the authorities. This is necessary given that terrorism is unlike conventional crimes, such as robbery, murder, assault, or any crime, the motive can be due to revenge, individual interests, or needs. However, terrorism is a crime that originates from thought (ideology), so it cannot be eliminated by violence.

Until today, handling terrorism tends to use classic methods, which are killing or terrorizing using violence. It leaves them in fear, even though ideology lies in thought. Being killed does not make them regret it, instead, they feel proud of the death, not to mention the pride of other terrorist cadres. Surely, they are quite proud because they consider death to be their goal (martyrdom).

A more effective way is with a humanistic approach, by providing space for them to contemplate their mistakes and actions, so that terrorists are aware that their actions are wrong and violate the law. One should communicate with them so that the background of their problems can be understood, both personally and collectively.

In the future, the strategy of countering terror through a humanist approach will be the main alternative in handling terrorism. Because in humanity, any person has the same desire to be treated as a human being, to be respected, to have their opinions heard, and to talk and tell stories about their lives until they are trapped in the vile ideology of terrorism.

Analysis of judicial decisions in law enforcement against terrorism

If a judge makes a decision that has a proximate direction toward the principle of legal certainty, the judge will automatically move away from justice. Conversely, if a judge makes a decision that tends to have a closer direction toward justice, the judge will automatically move away from the point of legal certainty (Ahmad Ali & Heryani, 2012). This is where there are limits to a judge's freedom. A judge can only move within these two limiting points. With rational thoughts, a judge will determine when he must be closer to the point of legal certainty and when he must be closer to the point of justice. The principle of benefit transposes between the principles of legal justice and certainty. The principle of benefit tends to discern the objective or the use of that law in society. Therefore, the true meaning of the law is to serve humans, rather than humans existing for the law (Margono, 2019).

An emphasis on the principle of legal justice will tend to defend the written legal norms from the existing positive law. Legal regulations should be upheld in the name of legal certainty. This normative method of thought will experience issues when written stipulations fail to answer the issues. Thus, in such a situation, judges should find the law to fill the void in that stipulation.

If there is an emphasis on the principle of justice, the judge should consider the law in society and the unwritten legal stipulations. In this case, there should be a distinction between the sense of justice according to individuals, groups, and society. Apart from that, justice according to a societal group may not always accord with that in other societal groups. Therefore, in judicial consideration, a judge should be able to illustrate those aspects when the judge chooses the principle of justice, for instance, as a reason to make a verdict. An emphasis on the principle of benefit will vary the economic aspect upon the consideration that the law exists for humans, whereas the law's goal is to bring benefit to society in general (Abdullah, 2010). Meanwhile, an

emphasis on legal certainty will be more nuanced towards the creation of order and regularity in society.

This should be highlighted given that the positive and negative aspects of law depend on to which extent the law brings joy to humans. Jeremy Bentham asserts that the state and the law prevail solely to bring essential benefit, namely the happiness of the majority of the people. Meanwhile, John Rawls with his Justice as Fairness theory affirms that the law should create an ideal society, one that tries to amplify happiness and minimize unhappiness (the greatest happiness of the greatest number of people) (Ali, 2002).

Meanwhile, law enforcement is carried out with the submission of terrorism criminal act cases to the litigation process. Then, the authors have listed judicial decisions regarding terrorist criminal acts in Poso and its surrounding areas. It is worth noting that in making judicial considerations for each case, judges put judicial and sociological considerations. The judicial consideration is that the defendant's actions are validly proven and pleaded guilty to committing the criminal act of terrorism, meanwhile, the sociological consideration is that the judge evaluates aspects that may aggravate or alleviate the defendant as well as the event that motivates the criminal act. In this context, the following are several cases that have been decided by the court, along with the judges' reasoning for their decision.

Judicial decision No. 919/Pid.Sus/2015/PN.Jkt.Tim. It demands imprisonment of 5 years, the verdict is 4 years. The judicial considerations were based on reasoning the defendant was well-behaved and did not complicate the proceedings, had never been convicted, and had family dependents. This case was adjudicated in a deliberation meeting of the Judicial Panel of East Jakarta District Court on Thursday, 26 November 2015 by the chief judge. The decision was read in a trial open for the public, on Wednesday, 2 December 2015 by the judicial panel and the subsidiary committee, participated by the general prosecutor and the defendant, accompanied by his legal advisory team (BNPT, 2022).

Judicial decision No. 859/PID.SUS/2014/PN.JKT.TIM. demands imprisonment of 6 years, yet the verdict is 4 years. The judicial considerations were based upon the defendant's open confession and that he regretted his actions, he and his family apologized to the victim's family, he was well-behaved and cooperated with the proceedings, he had never been convicted, and had family dependents. This case was tried at the East Jakarta District Court in 2014. The decision was read on Wednesday, 3 December 2014 in an open court by the chief judge and accompanied by the panel (Mahkamah Agung, 2014).

Judicial decision No. 970/PID/Sus/2014/PN.JKT.TIM. demands imprisonment of 6 years and the verdict is 5 years. The judicial considerations were based on the consideration that the defendant was well-behaved and did not complicate the proceedings, had never been convicted, and had family dependents. The case was tried at the East Jakarta District Court in 2014. This case was decided in a deliberation meeting of the judicial panel of East Jakarta District Court on Monday, 15 December 2014. It was read in an open court, on Wednesday, 17 December 2014 by the chief judge and accompanied by the panel, aided by a subsidiary committee at the East Jakarta District Court. It also included the general prosecutor and the defendant together with his legal advisory team (BNPT, 2022).

Judicial decision No. 762/Pid.Sus/2013/PN.JKT.UT demands imprisonment of 5 years and the verdict is 3 years and 6 months. The judicial considerations were that the defendant confessed openly and regretted his actions, he and his family apologized to the victim's family, was well-behaved and did not complicate the proceedings, had never been convicted, and had family responsibilities. This case was decided on Thursday, 31 October 2013 in a deliberation meeting of the East Jakarta District Court Judicial Panel. On Wednesday, 6 November 2013, this decision was read in an open court, followed by the general prosecutor at the district attorney of East Jakarta, the defendant, accompanied by his legal advisory team (BNPT, 2022).

Judicial decision No. 1413/Pid.B/2007/PN/Jkt-Sel demands imprisonment of 20 years and the verdict is 19 years. The judicial considerations were that the defendant was polite and did not complicate the proceedings, had never been convicted, and had family dependents. The case was tried at the South Jakarta District Court in 2007. The decision was read on Tuesday, 11 December 2007 by the Chief Judge in an open court, in front of the general prosecutor and the defendant, accompanied by his legal advisory team (Mahkamah Agung, 2007).

The same legal considerations were also expressed in judgment No. 373/Pid.Sus.Terroris/2015/PN.Jkt.Utr, in which the defendant was charged with 10 years imprisonment and was sentenced to 6 years and 8 months (BNPT, 2022). In 2014, judges at the East Jakarta District Court issued a similar consideration in Judgment No. 629/Pid/Sus/2014/PN.JKT.TIM. The defendant was charged with 15 years imprisonment and sentenced to 13 years (BNPT, 2022). Similar considerations were also discovered in the Decision No. 571/Pid.Sus/2013/PN.Jkt.Tim which demands imprisonment of 6 years, but the verdict was only 3 years (BNPT, 2022).

Different cases were found in the judgments of the East Jakarta District Court No. 263/PID.SUS/2014/PN.Jkt.Tim and No. 487/Pid.Sus. Teroris/2013/PN.Jkt.Tim. In these two findings, the defendants received heavier sentences. In the first decision, the defendant was charged with 10 years imprisonment and sentenced to 12 years with the consideration that there were no mitigating circumstances, the defendant did not regret his actions and complicated his testimony. In the second one, the defendant was charged with 4 years imprisonment and sentenced to 6 years imprisonment upon similar consideration (BNPT, 2022).

From the analysis of these decisions, it can be concluded that 80% of judicial decisions were less severe than the prosecutor's demand. Those who received lighter sentences than the charges were convicted on humanitarian grounds (family responsibilities, apologizing, well-behaved) and judicial grounds (having never been convicted before). Meanwhile, in 20 % of judicial decisions, the punishments were more severe as it was deemed that the defendant did not have any remorse, acted as the main perpetrator, or caused a great threat to society. The judicial decision in these terrorism cases only resolves superficial issues. Judges should be able to consider deradicalization as an effort to alleviate the sanction.

In verdicts, it can be inferred that most judges attempted to make verdicts less than the prosecutors' demand (although some exceeded the demand). The arising issue is that terrorists have a great chance of indoctrinating their inmates. Thus, they are not detained in the same prison as general crimes. The judges should also consider remorseful perpetrators and enroll them in deradicalization programs. For this reason, terrorist inmates should be classified into those who regret their actions and those who do not. This should be done to facilitate the deradicalization process because there are treatment differences for prisoners in both classifications.

Concerning the punishment for terrorists, for comparison, it is worth looking at the terrorism case that shocked the world in New Zealand in 2019. In this case, the perpetrator was sentenced life sentence without parole. The judge imposed the sentence - the harshest available to the court. It marked the first time a convicted person had ever been imprisoned with no possibility of parole in New Zealand. The Perpetrator killed 51 people and injured 40. The case was tried in the High Court at Christchurch (Brown, 2020).

It is interesting to see that the judge's considerations that resulted in the life sentence of the perpetrator to a heavy sentence principally correspond to the judge's considerations that aggravated the terrorist sentence in Indonesia, namely, "It is not apparent that you are genuinely remorseful for your actions", said the Judge. Besides, the attack was inhuman and merciless, and the action

was motivated by a "hatred of people perceived to be different from himself". For the judge, hateful ideology was anathema to the values of New Zealand's society (Brown, 2020).

Nonetheless, a year after that, he considered appealing his life sentence, admitting his guilty plea after the 2019 attack was under coercion. His lawyer stated that his client pleaded guilty the year before because of the "inhumane and degrading treatment" he experienced while awaiting trial. The lawyer said he had advised his client to appeal against his life sentence without parole because it is what is called a "denial of hope" and breached the Bill of Rights, and he was considering it (Reuters, 2021).

It is expected that judicial decisions can fulfill the sense of justice, meaning that justice is fairly distributed to the parties in the case. The aforementioned justice should be substantial justice rather than formal justice, meaning it is real justice that is accepted and felt by the parties in the case. Meanwhile, formal justice is defined as justice that is solely based on the law. There is no guarantee that such justice can be accepted and is deemed as just by the concerned parties (Soetomo, 2019). In this case, substantial justice is obtained by making decisions that will make perpetrators realize their actions by enrolling perpetrators into deradicalization programs.

CONCLUSION

The development of law enforcement against terrorism has not been efficient. One of the reasons is that law enforcement is only defined as the enforcement of legal regulations. Thus, procedural justice becomes a basis in the law enforcement process. This is unfortunate since judicial decisions as the last resort in law enforcement against terrorism in Indonesia are still dominated by such thoughts on procedural justice. This occurs even though, philosophically, law enforcement aims to create justice in society. Law enforcement should ideally understand humanistic values and put them into an ideology. This is so the law enforcement process does not violate the human rights of individuals as law violators who, according to the stipulations of the criminal procedural code, are protected by the law. Simultaneously, if the authorities - namely Densus 88 - commit violence against terrorists, they must be brought to justice as well. Disciplinary or administrative sanctions will not suffice. If not, the community - in this case the Poso community - who are related to the terrorists will continue to "suspect" the law enforcement process in their area. This implies that they will continue the resistance to the authorities and secretly sympathize with the terrorists.

It is time for law enforcement in this country to slowly start reading the law using their conscience. They should discover, follow, and understand the legal values and sense of justice that live in society. The application of the law cannot be carried out rigidly but with "a live application" method. This denotes that its application should be carried out as optimally as possible to manifest the essential objective of the law, i.e., creating a harmony that results in justice and peace (humanistic values). Eventually, this will logically bring great benefit to society in general. The last resort of law enforcement is justice, which is represented by the gavel. Thus, the task of law enforcement is not limited to enforcing the law *an sich*, but more than that, they are justice enforcement. Oftentimes, law enforcers fail to understand this great and noble mission. As a consequence, in many cases, rather than manifesting legal compliance, law enforcement ironically causes social resistance.

REFERENCES

- Abdullah, S. (2010). *In The Name Of Law: Sisi Lain Dari Penegakan Hukum*. Makassar: Pustaka Refleksi.
- Ahmadi, Y. (2017). Kebijakan Penegakan Hukum Terhadap Tindak Pidana Terorisme yang Dilakukan Kelompok Radikal (The Law Enforcement Policies Against Terrorism Criminal Offense by Radical Groups). *Lega Lata J. Ilmu Huk.*, 1(1), 234–263.
- Ali, Achmad. (1990). *Mengembara Di Belantara Hukum*. Makassar: LPPM Unhas.
- Ali, Achmad. (2004). *Meluruskan Jalan Reformasi Hukum*. Jakarta: Agatama Press.
- Ali, Achmad. (2010). *Criminal Justice System*. Makassar: Umitoha.
- Ali, Achmad. (2012). *Keterpurukan Hukum di Indonesia: Penyebab dan Solusinya*. Jakarta: Ghalia Indonesia.
- Ali, Ahmad. (2002). *Menguak Tabir Hukum (Suatu Kajian Fisologis dan Sosiologis)*. Jakarta: Gunung Agung.
- Ali, Ahmad, & Heryani, W. (2012). Resep Hukum” Sebuah bunga Rampai”. In *Kencana Prenada Media Group* (1st ed.). Jakarta: Kencana Prenada Media Grup.
- Atiqoh, Dewi. (2023). *Peran Hakim dalam Mewujudkan Asas Keadilan, Kepastian Hukum dan Kemanfaatan Putusan*, Retrieved November 07, 2023, from <https://pa-purwodadi.go.id/index.php/>
- Atmasasmita, R. (2001). *Reformasi Hukum, Hak Asasi Manusia Dan Penegakan Hukum*. Bandung: Mandar Maju.
- Black, D. (2010). *The Behavior of Law*. Bingley: Emerald Group Publishing Limited.
- Brown, Tim. (2020). "Christchurch Mosque Attacks: Terrorist Sentenced to Life in Jail without Parole", Retrieved December 07, 2023, from <https://www.rnz.co.nz/news/national>.
- BNPT. (2022). Dokumen Hukum. Retrieved July 16, 2023, from <https://jdih.bnpt.go.id/dokumen?peraturan=4>
- Friedman, L. M., & Hayden, G. M. (2017). American law: An introduction. In *American Law: An Introduction*. <https://doi.org/10.1093/acprof:oso/9780190460587.001.0001>
- Harahap, S. (2017). *Upaya Kolektif Mencegah Radikalisme Dan Terorisme*. Depok: Siraja.
- Huijbers, T. (1993). *Filsafat Hukum dalam Lintasan Sejarah (Philosophy of Law in Historical Trajectory)*. Yogyakarta: Kanisius.
- Iriani, D. (2016). *Hukum Sebagai Alat Kontrol Sosial dan Sistem Supremasi Penegakan hukum. Justicia Islamica*.
- Kenedi, J. (2017). *Kebijakan Hukum Pidana: Dalam Sistem Penegakan Hukum Di Indonesia*. Yogyakarta: Pustaka Pelajar.
- Lemek, J. (2007). *Mencari keadilan: pandangan kritis terhadap penegakan hukum di Indonesia*. Jakarta: Buku Kita.
- Mahkamah Agung. (2007). Putusan. Retrieved July 16, 2023, from <https://putusan.mahkamahagung.go.id>
- Mahkamah Agung. (2014). Putusan. Retrieved July 16, 2023, from <https://putusan.mahkamahagung.go.id>
- Manik, V. J. (2003). Reproduksi kekerasan tanpa akhir: Sebuah pandangan terhadap ketidakmampuan negara mengelola kekerasan. *Indonesian Journal of Criminology*, 3(1), 4200.
- Margono. (2019). *Asas keadilan, kemanfaatan, dan kepastian hukum dalam putusan hakim*. Jakarta: Sinar Grafika.
- Mertokusumo, S., & Pitlo, A. (2020). *Bab-bab tentang Penemuan Hukum (Chapters on the Discovery of Laws)*. Bandung: Citra Aditya Bakti.
- Muallifah. (2022). *Mampukah Pendekatan Humanis dalam Penanganan Aksi terorisme?*

- Retrieved November 07, 2023, from <https://www.harakatuna.com/>
- Nasution, A. R. (2018). Penegakan Hukum Terhadap Tindakan Terorisme sebagai 'Extraordinary Crime' dalam Perspektif Hukum Internasional dan Nasional. *Talenta Conference Series: Local Wisdom, Social, and Arts (LWSA)*, 1(1), 8–14.
- Ngadimin, Kasubdit I Ditreskrim, P. S. (2021). *Interview*. Palu.
- Perkasa, V. D. (2021). Violent Extremism dalam Sudut Pandang Antropologi (Violent Extremism in the Perspective of Anthropology). In *Asking Sensitive Questions Panduan Pelaksanaan Survei dengan Tema Tindakan Ekstrem Berbasis Agama dan Non-Agama (Asking Sensitive Questions The Guidelines to Undergoing Survey with Extreme Religion and Non-Religion-Based Themes)*. Jakarta: Centre for Strategic and International Studies. Retrieved from <https://www.jstor.org/stable/resrep25408.6>
- Pitaloka, R. D. (2004). *Kekerasan Negara Menular ke Masyarakat* (Galang Press, Ed.). Yogyakarta.
- Presetyo, D., Panca, R. Z., & Widodo, U. (2016). *Ilmu dan teknologi kepolisian: implementasi penanggulangan terorisme dan radikalisme di Indonesia*. Depok: Raja Grafindo Persada.
- Purwawidada, F. (2016). *Hukum Humanisme dalam Pembaharuan Hukum di Indonesia (The Humanism Law in the Law Renewal in Indonesia)*.
- Rahardjo, S. (2006). Pendidikan Hukum Sebagai Pendidikan Manusia. *Law Reform*, 1(1), 1. <https://doi.org/10.14710/lr.v1i1.12176>
- Rahmat, M. (2017). Politik Hukum Terhadap Tindak Pidana Terorisme Dalam Pembaharuan Hukum Pidana Indonesia. *Jurnal Wawasan Yuridika*. <https://doi.org/10.25072/jwy.v1i2.138>.
- Reuters (2021). New Zealand Mosque Shooter Considers Appealing Life Sentence. Retrieved December 07, 2023, from <https://www.reuters.com/world/asia-pacific/>.
- Santoso, T. (2001). Kekuasaan Dan Kekerasan. Masyarakat, Kebudayaan Dan Politik. *Indonesian Journal of Criminology*, XIV.
- Soeharto. (2007). *Perlindungan Hak Tersangka, Tedakwah, Dan Korban Tindak Pidana Terorisme: Dalam Sistem Pradilan Pidana Indonesi*. Bandung: Refika Aditama.
- Soekanto, S. (2007). *Faktor-Faktor Yang Mempengaruhi Penegakan Hukum (The Factors that Influence Law Enforcement)*. Jakarta: Raja Grafindo Persada.
- Soetomo. (2019). *Ruwetnya Mencari Keadilan Hukum di Indonesia*. Jakarta: Nice World.
- Sulardi. (2009). *Reformasi Hukum: Rekonstruksi Kedaulatan Rakyat Dalam Membangun Demokrasi*. Malang: Intrans Publishing.
- Triyono, L. (2010). *Wajah Ganda Kekerasan Negara. Wawasan*.
- Volokh, Eugene (2017). *Academic Legal Writing*. New York: Foundation Press.
- Wignjosoebroto, S. (2011). *Hukum Dan Keadilan Masyarakat: Perspektif Kajian Sosiologi Hukum*. Malang: Setara Press.
- Williams, R. H., & Juergensmeyer, M. (2002). Terror in the Mind of God: The Global Rise of Religious Violence. *Sociol. Relig.*, 63(3), 397–399. <https://doi.org/10.2307/3712482>
- Yani, M. A. (2015). Pengendalian Sosial Kejahatan; Suatu Tinjauan Terhadap Masalah Penghukuman Dalam Perspektif Sosiologi. *Jurnal Cita Hukum*.